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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/537,532	06/03/2005	A Christian Tahan	GQUANTA-101	4780
7590 Robert K Tendler 65 Atlantic Avenue Boston, MA 02110	06/14/2010		EXAMINER PALABRICA, RICARDO J	
		ART UNIT 3663	PAPER NUMBER	
		MAIL DATE 06/14/2010	DELIVERY MODE PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/537,532	TAHAN, A CHRISTIAN	
	Examiner	Art Unit	
	Rick Palabrica	3663	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 05 February 2010.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,3,4,11 and 13-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,3,4,11 and 13-16 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

1. Applicant's 2/5/10 Amendment, which directly amended claims 1 and 13, and traversed the rejection of claims in the 7/28/08 Office action (not the 7/28/09 date cited by applicant), is acknowledged.

Applicant's arguments have been fully considered but they are not persuasive.

Response to Arguments

2. Applicant traversed the rejection of claims under 35 U.S.C. 112, first paragraph, and 35 U.S.C. 101 on the ground that: a) "the Examiner is not focusing on the clear claim language", which "does not in any way claim a theory as to why the method works"; b) "there is clear evidence in the Specification that experiments shown in the figures were performed and that there were results showing energy production which are clearly shown in Fig. 11B and Figure 12B"; "[a]pplicant need not know or conjure as to why a certain process works, but only that it works."

The examiner disagrees.

As to argument a), the examiner's rejection is based on the method itself, which applicant is claiming. As stated in the 7/28/08 Office action, the claims are directed to a method of producing energy, and the specification is presumed to provide the bases for these claims. The examiner has demonstrated in said Office action that the specification does not contain reputable evidence that is sufficient to support any allegation or claims that: a) the invention generates energy; or b) that claims of energy generation are valid

and reproducible; or c) that the invention, as disclosed, is capable of operating as indicated and capable of providing the intended output. The examiner has provided support to his observations, e.g., in section 2 of the 7/28/08 Office action, wherein he raised specific issues on the validity of the bases for the claimed method. To date, applicant has not provided any response to these issues that go into the heart of the claimed invention.

As to argument b), again, as stated in section 2 of the 7/28/08 Office action, applicant has not positively ruled out that the alleged “results showing energy production which are clearly shown in Fig. 11B and Figure 12B” is due to misinterpretation or even inadvertent misrepresentation of experimental data.

The claimed energy production is attributed by applicant to proton decay. However, this decay time was only inferred and not positively determined by the applicant. There is no indication of the possible errors and sources of errors including systematic errors, cumulative errors, instrument errors, etc. Such is necessary in determining the applicant’s conclusion or interpretation of the experimental results that he attributes to proton decay time.

Even in cases where a parameter for a process/concept is determined directly from an actual experiment (which is not the case for applicant), there will be errors introduced due to systematic or cumulative errors, as well as instrument errors, since all instruments have some error in their measurements. The magnitude of the error is dependent, for example, on the type and quality of the instrument. Clearly, if the results fall within the limits of experimental error, the results have no probative value.

In the instant case, applicant has neither identified all of the various errors (instrument errors, errors in assumptions/approximations, etc.) nor has applicant shown that his conclusion fall outside the error limits. These issues go to the heart of the question whether the invention, as claimed by the applicant, actually works. If applicant's results and conclusions are based on misinterpretation of the data or errors in the experiment, then the concept is not valid and therefore the claimed invention lacks enablement.

Reproducibility of results is clearly a critical feature in determining if a disclosure adequately teaches the artisan how to make and use an invention for its disclosed purpose. Applicant has not presented objective evidence that the alleged results (i.e., of generating energy) are real and not due to experimental errors, instrumentation errors, misinterpretation of results, etc.

Clearly, when an artisan or experimenter is relying on the experimental results of a particular experiment(s) to establish certain facts, it is incumbent upon the experimenter to show that the alleged experimental results are valid and not just the result of experimental errors (and that the alleged experimental results are valid and not just the results of experimental errors (and that the alleged experimental results do not fall within the limits of experimental errors).

Note further that applicant's inference of the proton decay time of 360 seconds is based on production of gravity waves resulting from said proton decay. However, note the above discussion on the absence of gravity waves from proton decay.

It is well established that where the utility of the claimed invention is based upon allegations that border on the incredible or allegations that would not be readily accepted by a substantial portion of the scientific community, the applicant must submit sufficient substantiating evidence of operability. Note *In re Houghton*; 167 USPQ 687 (CCPA 1970); *In re Ferens*, 163 USPQ 609, *Puharich v. Brenner*, 162 USPQ 136 (CA DC 1969); *In re Pottier*, 153 USPQ 407 (CCPA 1967); *In re Ruskin*, 148 USPQ 221 (CCPA1966); *In re Citron*, 139 USPQ 516 (CCPA 1963); and *In re Novak*, 134 USPQ 335 (CCPA1962).

3. Applicant traversed the rejection of claims based on applied art, Bloch et al., on the ground that “nowhere in Bloch et al. is there any indication of the generation of energy”; “[h]is experiments were used for magnetic modulation during magnetic resonance registration.”

The examiner disagrees.

Bloch et al. describes an apparatus that can be exercised to be identical to the same process which is recited in said applicant's claims. Bloch et al. does not specifically disclose that (as presently claimed) energy is produced or room temperature fusion is formed in their method of operation. Assuming for the sake of argument that Bloch et al.'s system is not capable of producing (as presently claimed) said energy and/or nuclear fusion, applicant's claims are incomplete in failing to recite the additional structure and/or method steps (not found in Bloch et al.) that are actually necessary to produce the indicated results (as recited in applicant's claims).

Simply stating that the concepts the applicant espouses are correct is not sufficient substantiating evidence. Sufficient substantiating evidence may be based on widely accepted scientific concepts (e.g., quantum mechanics), a working model, or a supporting opinion in a widely respected and peer-reviewed publication.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Specification

4. The specification is objected to under 35 U.S.C. 112, first paragraph, as failing to provide an adequate written description and as failing to adequately teach how to make and/or use the invention, i.e., failing to provide an enabling disclosure.

The reasons are the same as those stated in section 2 of the 7/28/08 Office action, as further clarified in section 2 above, which reasons are herein incorporated.

Claim Rejections - 35 USC § 112

5. Claims 1, 3, 4, 11, and 13-16 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one

skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The reasons are the same as those stated in section 3 of the 7/28/08 Office action, as further clarified in section 2 above, which reasons are herein incorporated.

6. Claims 1, 3, 4, 11, and 13-16 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements/steps, such omission amounting to a gap between the elements.

The reasons are the same as those stated in section 4 of the 7/28/08 Office action, as further clarified in section 2 above, which reasons are herein incorporated.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

7. Claims 1, 3, 4, 11, and 13-16 are rejected under 35 U.S.C. 101 because the claimed invention as disclosed is inoperative and therefore lacks utility.

The reasons are the same as those stated in section 5 of the 7/28/08 Office action, as further clarified in section 2 above, which reasons are herein incorporated.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 13 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Bloch et al., "The Nuclear Induction Experiment", Phys. Review, 70 (7,8), pp. 474-485, 1946.

The reasons are the same as those stated in section 6 of the 7/28/08 Office action, as further clarified in section 3 above, which reasons are herein incorporated.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1, 3, 4, 11, and 13-16 rejected under 35 U.S.C. 103(a) as being unpatentable over Bloch et al.

The reasons are the same as those stated in section 3 of the 7/28/08 Office action, as further clarified in section 2 above, which reasons are herein incorporated.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rick Palabrica whose telephone number is 571-272-6880. The examiner can normally be reached on 6:00-4:30, Mon-Thurs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Keith can be reached on 571-272-6878. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Rick Palabrica/
Primary Examiner, Art Unit 3663

June 11, 2010